IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.386 OF 2004

Union of India through General Manager,
Central Railway, Mumbai CST. ... Petitioners

vs.

M/s.R.T.Enterprises. .... Respondents.

Mr.T.J.Pandian, for Petitioners.

Mr.R.D.Dhanuka i/b. V.L.Panjawani, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 23rd August,2005

P.C.:-

1. By this petition, the petitioner challenges the Award made by the learned Arbitrators. A contract was given by the Railways to the Respondents for supply of certain material. Despite two extensions of time granted, the material was not supplied and therefore, the Contract was terminated. The strange thing is that though the Contractor was not able to supply the material, the contractor made

claim before the learned Arbitrators claiming the amount for loss of profit claiming compensation for the goods which were not taken up by the Railways. For loss of profit, the amount of Rs.20,937.50 has been awarded. Whereas as the cost of 8000 bolts Rs.73,347/- has been awarded. So far as the loss of profit is concerned, as per the terms of the Contract, the goods after they were manufactured, were to be inspected by the inspecting authority. The goods manufactured by the Respondents were inspected by that authority and were rejected on 24.4.1992. According to the Contractor, it rectified the defects and re-submitted the goods for inspection. However, the date on which the goods were re-submitted is not disclosed. The contract was valid upto 30.6.1992, but it does not appear from record that goods were re-submitted for inspection before 30.6.1992. The contractor applied for further extension of time beyond 30.6.1992, but this time extension was not granted. Still the Arbitrators have held that the claims are substantiated and has found fault with the Railways for termination of the contract and for not granting extension of time and has awarded the amount for loss of profit. The Award made in this regard is clearly in breach of the principles of natural justice.

2. Similarly, an amount of Rs.73,347/- has been awarded as cost of the goods which were not supplied by the Respondents to the petitioners due to termination of the contract. The goods were to be accepted according to the contract, by the petitioners only after they

were inspected and found in order by the inspecting authority. Admittedly, those goods were found unfit by the Inspecting authority. However, the learned Arbitrators without considering this aspect of the matter has awarded amount of Rs.73,347/- towards the cost of the goods. What is pertinent to note here is that the contractor retained the goods and also claimed the cost of that goods. The entire award, in my opinion suffers from non application of mind and the reasons given by the learned Arbitrators are perverse, and therefore, the Award is liable to be set aside. The petition, therefore, succeeds and is allowed. The Award impugned in the petition is set aside. The Respondents are directed to pay costs of this petition to the Petitioners as incurred by the Petitioners.